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No. ~~OFFICE OF THE CLERK~~

In The

SUPREME COURT

Of The

UNITED STATES

OCTOBER TERM, 1994

Stephen C. Tassio, *Petitioner*

vs.

Willard Soper, Robert F. Frappier, Michael W. McManus, Robert Maris, Robert Day, Martha Ritter, Kislak National Bank, Kislak Mortgage Service Corporation,
Individually, Jointly and Severally, *Respondants*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can Courts, with no constitutionally granted authority, rule with effect thereon?

2. Can United States District Courts ignore 28 U.S.C.S. § 1331?

3. Can United States District Courts ignore cases involving lack of due process and equality?

4. Can United States District Courts side with State Courts who act outside their lawfully constituted authority in preference over the United States and State Constitutions?

5. Can United States District Courts side with private enterprise in preference over the United States and State Constitutions?

6. Can United States District Courts choose to ignore the rulings of this Court?

7. Can the United States Courts of Appeals ignore the United States Constitution and the rulings of this Court?

PARTIES TO THE PROCEEDING

All parties to this proceeding are listed in the caption of the case. Stephen C. Tassio, the sole Petitioner in this case, is an individual and therefore certifies, pursuant to Rule 29.1 of this Court's Rules, that no corporation, either parent or subsidiary, is a Petitioner.

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Stephen C. Tassio, *Petitioner*

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Willard Soper, Robert F. Frappier, Michael W. McManus, Robert Maris, Robert Day, Martha Ritter, Kislak National Bank, Kislak Mortgage Service Corporation,
Individually, Jointly and Severally, *Respondants*

Petitioner Stephen C. Tassio, (hereinafter known as "Petitioner"), respectfully petitions this Court for a Writ of Certiorari for review of the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in said proceeding on September 21, 1994.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Fifth Circuit is reprinted in the attached Appendix as Appendix A at 1a. The Judgment of the United States District Court, Northern District of Texas, Dallas Division is reprinted in the attached Appendix as Appendix B at 3a. The Memorandum Opinion and Order of the United States District Court, Northern District of Texas, Dallas Division is reprinted in the attached Appendix as Appendix C at 4a.

JURISDICTION

Invoking federal jurisdiction under 28 U.S.C.S. § 1331, Petitioner brought this action in the United States District Court, Northern District of Texas, Dallas Division on August 20 1993. On May 3, 1994 the District Court granted Respondants/Defendants (hereinafter known as "Respondants") Motions to Dismiss. See Appendix C, 9a.

Petitioner appealed to the United States Court of Appeals for the Fifth Circuit on May 9, 1994. On September 21, 1994 the Fifth Circuit entered an order affirming the District Court opinion. See Appendix A, 1a. Petitioner did not seek a rehearing.

This Court has jurisdiction to review the judgment of the Fifth Circuit pursuant to 28 U.S.C.S. § 1254 (1).

STATUTORY PROVISION INVOLVED

The Fifth Admendment to the United States Constitution:

"No person shall...be deprived of life, liberty or property, without due process of Law;..."

STATEMENT OF THE CASE

Petitioner was summoned into the Justice of the Peace Court, Richardson Texas, of Respondent Martha Ritter on a charge of Forcible Detainer, brought against Petitioner by Respondants Willard Soper, Robert F. Frappier, Michael W. McManus, Robert Maris, Kislak National Bank, Kislak Mortgage Service Company, (hereinafter known as "other Respondants").

Despite vigorous challenges to the Courts jurisdiction by Petitioner, both in writing and in open Court, as Petitioner had shown to the Justice Court that this was an issue of Title and Liens not of landlord-tenant, the Justice Court granted possession of Petitioners Land and home to other Respondants. Petitioner then appealed to the County Court at-Law of Dallas County, Texas, of Respondant Robert Day to attempt to reverse the out of jurisdiction ruling granted by the Justice Court, so that Petitioner would have been able to prosecute other Respondants in the State District Court of Texas which has original jurisdiction of the matters of Titles and Liens.

Together Judges Day and Ritter are hereinafter known as "Respondants", and Respondants as a group as "Respondants (all)".

In the Court of Respondant Day, however, Petitioner was even more flagrantly abused. Counsel for

other Respondants, and a Respondant, Robert Maris, declared in open Court under oath that Petitioner had not answered other Respondants Forcible Detainer and had therefore defaulted. Respondant Maris had, at this time, in visible possession, his served copy of Petitioners answer, as did the Court as evidenced by the file stamps on said document of Petitioner. Nevertheless, despite Petitioners confusion as to this turn of events, Respondant Day upheld the order to other Respondants.

Petitioner then filed a Motion for a hearing to overturn and set aside this ruling so that Petitioner might bring his case to a Court of competent jurisdiction, namely the Texas State District Court. At the hearing, Petitioner was not allowed to present his case and Respondant Day denied Petitioners Motion, his open court appeal, and Ordered Petitioner to post a $10,000.00 cash bond if Petitioner wanted to have his case heard further. Said actions of the Respondants against Petitioner are in the record as affidavits of some of those present in said Courts, as well as a copy of said Order.

Petitioner then filed his case in the United States District Court. During the proceedings, however, the Respondants (all) had Petitioner Dissiesed by Armed Force with a group of greater than twenty heavily armed men on September 30, 1993 in an attempt to disrupt the proceedings against them.

Petitioner was then forced to file an amended original complaint as the Resondants (all) had Willfully and materially altered the standing of the parties. Petitioner then discovered that his position was so strong that Petitioner filed a Motion for Summary Judgment on December 1, 1993. Despite Federal Rules of Civil Procedure 56 (c) and a Request for Judgment entered by

Petitioner on February 16, 1994 the District Court refused to rule on Petitioners Motion for Summary Judgment. Instead, on May 3, 1994, the District Court granted Respondants (all) Motions to Dismiss some seven months after they were filed. The District Court had contrived an elaborate fiction consisting of untruths and omissions to present a case which was not the Petitioners case and then denied jurisdiction through abstention. See Appendix C at 4a. Petitioner then appealed to the Fifth Circuit pointing out the defects in the District Court fiction with over 90 references into the record to support Petitioners position. Despite the atrocities that had been committed upon the Petitioner by all of the lower Courts and their steadfast refusal to grant Justice Without Predjudice to the Petitioner, the Appeals Court affirmed the District Court and refused to try the Law of Petitioners matter or even consider his Summary Judgment.

STATEMENT OF ORIGINAL FEDERAL JURISDICTION

28 U.S.C.S. § 1331 Federal Question, "The (US) District Courts shall have original jurisdiction of all civil actions arising under the Constitution, Laws or Treaties of the United States". Petitioner had his Land and home effectively stolen from him by not being allowed to have his matter heard in a Court of competent jurisdiction, thereby violating Petitioners Fifth Admendment Constitutional protection to due process and equality under the Law. "Notice and hearing, together with a legally competent tribunal having jurisdiction of the case, con-

stitute basic elements of the constitutional requirement of due process of Law." Powell v. Alabama, 287 US 45, 53 S. Ct. 55, 77 L. Ed. 158.

REASONS FOR GRANTING THE WRIT

After being denied the opportunity to be heard in a Court of competent jurisdiction Petitioner had correctly brought his matter to the United States District Court. The lower State Courts were challenged as to juridiction by Petitioner who pointed out the enabling clause in the Texas State Constitution giving the State District Courts original jurisdiction in the matters of Titles and Liens and by Judicial Notice of "Hagins v. Lavine, 94 S. Ct. 1372 (1974) Once jurisdiction is challenged, it must be proved".

Despite these facts and the demonstration by proof that the issue was of Titles and Liens and not landlord-tenant, the lower State Courts refused to show proof of their jurisdiction or to cease handling Petitioners matter. The Respondants refusal to establish or prove jurisdiction when challenged does not give them jurisdiction which they do not have. Instead it is well established that Judges operating outside their authority are usurpers and trespassers liable for damages, without immunity. "On the other hand, all judges, whether of superior or inferior jurisdiction, are liable for their acts if they act entirely without jurisdiction". "But where there is clearly no jurisdiction over the subject matter, the exercise of any authority is a usurpation, and the judge is liable, even though his act invloves his decision made in perfect good faith that he has jurisdiction". O'Regan v. Schermerhorn 50 A 2d 10, Hoppe v. Klapperich 28 NW 2d 780, 46 Am Jur 2d § 75 & 76. "A judge is not such at all times and

for all purposes; when he acts he must be clothed with jurisdiction; and acting without this, he is but the individual falsely assuming an authority he does not possess". 2 Cooley, Torts, 4th Ed. § 315.

"Where judge acts illegally, outside the limits of his jurisdiction, he becomes a trespasser, and is liable in damages as such". Rammage v. Kendall 181 SW 631. In Lowe v. Letsinger (C.A. Ind., 772 F.2d 308), qualified immunity does not exist in the presence of Constitutional violations or outside judges jurisdiction. If a Judge is merely a person when outside his jurisdiction, how can rulings made when he is outside his jurisdiction have any effect?

Petitioner brought his matter to the United States District Court on the grounds that he had his Land and home taken from him by persons with no authority to do so, namely the Respondants (all). "The protection of the individual from arbitrary action is the very essence of due process of Law". Slochower v. Board of Higher Education of New York City 350 US 551, 76 S. Ct. 637, 100 L. Ed. 692.

Petitioner brought his matter on 28 U.S.C.S. § 1331 for violation of his Fifth Admendment secured right to due process. Yet the District Court refused to even rule on the slightest point of Law in Petitioners matter despite the aforesaid Law. How can the District Courts ignore 28 U.S.C.S. § 1331? How can the District Courts refuse to try a case that so obviously involved a lack of due process? By what manner can the District Courts ignore the United States Constitution and rulings of this Court and prefer to align themselves with State Courts who operate outside their duly constituted limits?

By what manner can the District Courts ignore the United States Constitution and rulings of this Court and prefer to align themselves with people and organizations of private enterprise who operate outside the Law? By what manner can the United States Courts of Appeal ignore the United States Constitution and rulings of this Court and prefer to align themselves with renegade State Courts, and people and organizations of private enterprise who operate outside the Law?

Petitioner brings these questions which have arised out of the course of Petitioners matter. Petitioner in no way believes these Courts have singled him out for special treatment. Yet the unity all of the Courts exhibited against Petitioner and their complete and total refusal to rule on the slightest point of Law raised by Petitioner suggest that this handling of matters related to Titles and Liens is common place, despite the rulings of this Court, State Supreme Courts and Federal Courts.

Petitioners matter and claims are well settled, how can such behavior by the lower Courts be tolerated? How many other people have been deprived of their Land and home, as Petitioner has, by well oiled corrupt judical machinery? Petitioner has found evidence from the Debates of Congress that such occurances were a big problem from the early 1800's, and has presented said evidence to the District Court.

CONCLUSION

Petitioner has brought to this Court, of last resort, an American Nightmare. Petitioner has observed similar unlawful actions in other counties of Texas and in other States since his misfortune to be involved with Respondants (all). Petitioner to this date has not been afforded the slightest particle of due process by any Court, yet has endured, by the Grace of God, to this point, far beyond that which most others in this circumstance reach. Petitioner has shown in the record that this Court has ruled many times affirmatively for Petitioners position, yet the lower Courts have refused to re-inforce this Courts rulings. The lower Courts have ignored the United States Constitution and State Constitutions in their effort to deprive Petitioner and others of their Land and home.

PRAYER

Petitioner, therefore, prays that this Court answer the questions raised by the behavior of the lower Courts and reaffirm this Courts standing on those issues. And, Petitioner prays that his matter is finally considered and his Summary Judgment ruled upon, and the relief Petitioner seeks in his First Amended Original Complaint is awarded to Petitioner.

Respectfully submitted,

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APPENDIX
of the
PETITIONER

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10459
Conference Calendar

Stephen C. Tassio,

Plaintiff-Appellant,

versus

Willard Soper ET AL.,

Defendants,

Willard Soper ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CV-1687-H

Before KING, SMITH, and BENAVIDES, Circuit Judges. PER CURIAM:*

The district court, finding that it lacked subject matter jurisdiction over Stephen C. Tassio's claims, dismissed the action. Tassio has presented no basis for federal jurisdiction over this matter. Although he complains that he has not been afforded due process in the Texas courts, he devotes his time to arguing the merits of his claims under state law and not to the district court's judgment of dismissal.

To the extent that he asserts title to the property

in question and seeks to challenge the adverse Texas state judgments, these are matters for the Texas courts. Thus, the district court properly dismissed Tassio's suit for lack of subject matter jurisdiction.
AFFIRMED.

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* Local Rule 47.5 provides: "The publication of opinions that have no precedental value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

This document has no closing and is not signed or acknowledged by anyone, except that it has the U.S. Court of Appeals file stamp on it.

APPENDIX B
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Stephen C. Tassio,

Plaintiff,

v.

Willard Soper, et al.,

Defendants.

Civil Action No. 3:93-CV-1687-H

JUDGMENT

This Judgment is entered pursuant to the Court's Memorandum Opinion and Order, dated May 3, 1994.

It is ORDERED, ADJUDGED and DECREED by the Court that Plaintiff Stephen C. Tassio take nothing by his claims against Defendants Willard Soper, Robert F. Frappier, Michael W. McManus, Robert Maris, Robert Day,Martha Ritter,Kislak National Bank, and Kislak Mortgage Srvice Corporation, and that Plaintiffs claims be and hereby are, DISMISSED on the merits at Plaintiff's costs.

SIGNED this 3rd day of May, 1994.

_____

BAREFOOT SANDERS, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

This document is signed by the judge.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Stephen C. Tassio,

Plaintiff,

v.

Willard Soper, et al.,

Defendants.

Civil Action No. 3:93-CV-1687-H

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants Soper, Frappier, McManus, Maris, Kislak National Bank, and Kislak Mortgage service Corporation's Motion to Dismiss, filed September 24, 1993; Plaintiffs Response, filed November 16, 1993; Defendants Judge Day and Judge Ritter's Motion to Dismiss, filed October 12, 1993; and Plaintiff's Response, filed November 16, 1993; Plaintiff's Motion for Summary Judgment, filed December 1, 1993; Defendants Responses, filed December 17, 1993 and December 21, 1993; Plaintiff's Replies, filed December 30, 1993; Plaintiff's Request for Judgment with Brief and Motion for Leave to File Applications for Writs of Execution, filed February 16, 1994; Defendant's Response, filed March 8, 1994; Plaintiff's Reply, filed March 23, 1994; various other motions filed by Plaintiff.

I. BACKGROUND

Tassio filed this suit to challenge forcible entry and detainer proceedings initiated in the Justice of the

Peace Court in Richardson, Texas and appealed to the County Court at Law No. 4 of Dallas County, Texas. See Plaintiff's Original Complaint, Ex. 1.[1] When this action was filed, Tassio and his wife Brenda lived at 1713 Arvada Drive, Richardson, Texas ("the property").

Defendant Kislak National Bank has held the mortgage and deed of trust on the property since at least May 17, 1991. See id.

Tassio has been in default on the Kislak National Bank note since 1990. See id., Affidavit of Betty Jean Tassio. Kislak National bank accelerated Tassio's promissory note and posted the property for foreclosure on May 7, 1993. See Plaintiff's Amended Original Complaint("Plaintiff's Amended Complaint"); Plaintiff's Original Complaint, Ex. 1. A nonjudicial foreclosure sale of the property occurred on June 1, 1993. See Plaintiff's Amended Complaint, at 3. Tassio filed a "Common Law Lien" on May 11, 1993. See id. Tassio claims that his "Common Law Lien" takes precedence over Kislak National Bank's promissory note and deed of trust.

After the foreclosure, Kislak National Bank began eviction proceedings. Tassio received a Notice to Vacate on June 3, 1993. See Plaintiff's Original Complaint, Ex. 1. Kislak National Bank filed a forcible entry and detainer action in Martha Ritter's Justice of the Peace Court in Richardson Texas. See Plaintiff's Amended Complaint, at 4. Plaintiff's Original Complaint, Ex. 3. Justice of the Peace Ritter held a hearing and ruled

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[1] Plaintiff filed his First Amended Original Complaint on December 9, 1993. The Amended Complaint incorporates exhibits to Plaintiff's Original Complaint.

against Tassio, granting Kislak National Bank possession of the property. See Plaintiff's Amended Complaint, at 5-6.

Tassio then appealed this decision to the County Court at Law No. 4 of Dallas County, Texas, Judge Robert Day presiding. Tassio again asserted his "Common Law Lien" theory, and in addition argued that he held a superior "Land Patent". See Plaintiffs Complaint, at 5-6; Plaintiff's Original Complaint, Ex. 1. Judge Day also ruled against Tassio, and issued a judgment on August 11, 1993 granting Kislak National Bank possession of the property. See Plaintiff's Amended Complaint, at 6-8; Plaintiff's Original Complaint, Ex. 7.

Tassio then filed a Motion to Dismiss and to Set Aside Order in Judge Day's Court. See Plaintiff's Amended Complaint, at 8-9; Plaintiff's Original Complaint, Ex. 2. On August 20, 1993 Judge Day held a hearing and denied Tassio's motion. See Plaintiff's Amended Complaint, at 8-9.

Tassio never appealed Judge Day's judgment dated August 11, 1993 or Judge Day's denial, signed August 23, 1993, of Tassio's Motion to Dismiss and to Set Aside. The forcible detainer judgment entered by Judge Day is now final. See Texas Rules of Appellate Procedure Rule 41.

Tassio filed this action on August 20, 1993, naming as defendants various entities involved in the forcible detainer proceedings against Tassio. Tassio was evicted from the property on September 30, 1993. He then filed his First Amended Original Complaint on December 9, 1993 (hereinafter "Plaintiffs's Complaint").

Tassio's Complaint asks this Court to overturn the state court judgment, and to return title and possession

of the property to Plaintiff. In addition, Tassio seeks $1,000,000 in damages for Defendants' alleged "theft by extortion of Plaintiff's Land and home" and for defendants' alleged violations of Tassio's constitutional right to due process and equal protection. See Plaintiff's Complaint, at 11-13.

II. Analysis of Motions to Dismiss

Defendants Day and Ritter ask the Court to dismiss Tassio's claims against them for failure to state a claim for which relief can be granted, pursuant to Rule 12 (b)(6). See Defendants' Motion, at 1. Defendants' Day and Ritter correctly assert the doctrine of absolute judicial immunity as a bar to Tassio's claims. See Defendants' Motion, at 2 (citing Johnson v. Kegans, 870 F.2d 992, 995 (5th Cir. 1989); Stump v. Sparkman, 435 US 349 (1978)). However, the Court finds it innecessary to apply the doctrine of judicial immunity because the Court finds that it has no subject matter jurisdiction over any of Tassio's claims.

As Defendants Soper, Frappier, McManus, Maris, Kislak National Bank, and Kislak Mortgage Service Corporation (Collectively "the Kislak Defendants") argue, this Court has no subject matter jurisdiction to review the state court judgment that granted possession of the property to Kislak National Bank. See Kislak Defendants' Brief, at 4. Although the Court agrees with this conclusion, it does not agree with Defendants' analysis. The Kislak Defendants cite cases applying the doctrine of abstention. See id. at 5-7 (citing Pennzoil Company v. Texaco, Inc., 481 US 1 (1987); Phillips v. Charles Schreiner Bank, 894 F.2d 127 (1990);

Duke v. State of Texas, 477 F. 2d 244 (1973)). These cases direct a federal court to abstain from exercising jurisidiction when a state court proceeding involving the same parties and issues is pending. In contrast, the present case involves a valid and final state court judgment. This Court has no subject matter jurisdiction because Tassio's complaint constitutes an impermissible collateral attack on a state court judgment. See District of Columbia Court of Appeals v. Feldman, 460 US 462 (1983); Reed v. Terrell, 759 F.2d 472 (5th Cir. 1985); Kimball v. Florida Bar, 632 F.2d 1283, 1284 & n.3 (5th Cir. 1980); Almon v. Sandlin, 603 F.2d 503, 506 (5th Cir. 1979).

A federal district court has no authority to review the final judgment of a state court. Feldman, 460 US at 482. Thus, this Court has no jurisdiction to overturn the state court judgment that granted possession of the property to Kislak National Bank, or to return title and possession of the property to Tassio.

In addition it is a well settled principle that a plaintiff may not seek a reversal in federal court of a state court judgment simply by casting his complaint in the form of a civil rights action. See Reed, 759 F. 2d at 473; Hagerty v.Succession of Clement, 749 F. 2d 217, 220. Tassio could have attacked the constitutionality of the state court judgment through appeals in the Texas courts, but he chose not to pursue further appeals. This Court does not have, nor should it have jurisdiction over claims that could have been attacked directly in a state court. See Reed, 759 F.2d at 473. Thus, the Court finds that it has no subject matter jurisdiction over Tassio's constitutional cliams.

The Court concludes that it has no subject matter

jurisdiction over any of Tassio's claims because they are "inextricably intertwined" with the state court judgment against Tassio. Reed, 759 F.2d at 473-74 (citing Feldman, 460 US at 483 n.16). Accordingly, the Kislak Defendants' Motion to Dismiss is GRANTED and Tassio's claims against the Kislak Defendants are DISMISSED with predjudice. In addition, Defendants Day and Ritter's Motion to Dismiss is GRANTED and Tassio's claims against Defendants Day and Ritter are DISMISSED with predjudice. See Fed. R. Civ. P. 12(b)(1).

III. Plaintiff's Motions

Plaintiff has filed numerous motions in this action. Because the Court has granted Defendants' Motions to Dismiss, and has dismissed all of Plaintiff's claims against all Defendants, Plaintiff's motions are hereby DENIED as MOOT.

IV. Conclusion

The Kislak Defendants' Motion to Dismiss is GRANTED and all of Plaintiff's claims against the Kislak Defendants are DISMISSED with predjudice. Defendants Ritter and Day's Motion to Dismiss is GRANTED and all of Plaintiff's claims against Defendants Ritter and Day are DISMISSED with predjudice. Plaintiff's Motions are DENIED as MOOT.

SO ORDERED.

DATED: May 3, 1994.

BAREFOOT SANDERS, CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

This document is signed by the judge.